

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FRANK GIL,

Plaintiff,

-against-

WEINSTEIN LIVE ENTERTAINMENT LLC,
HARVEY WEINSTEIN, ROBERT "BOB" WEINSTEIN,
and DAVID GLASSER

Defendants.
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Index No.:

**VERIFIED
COMPLAINT**

Plaintiff Frank Gil, by and through his attorneys, WHITE, HILFERTY & ALBANESE, P.C., alleges upon knowledge to themselves and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. Plaintiff Frank Gil ("Mr. Gil"), over the age of eighteen, files this complaint against Weinstein Live Entertainment LLC., ("WLE"), Harvey Weinstein ("H. Weinstein"), Bob Weinstein ("B. Weinstein"), and David Glasser ("Glasser")(together "Defendants") for breach of contract and retaliation.

JURISDICTION AND VENUE

2. This is a civil action brought pursuant to, and arising out of, violations of New York State Human Rights Law §296 *et seq.*, breach of contract, and any other claims, which can be inferred from the facts set forth herein.

3. Venue is proper pursuant to CPLR § 503(a), as a substantial part of the events or omissions giving rise to this action, including the breach of contract and unlawful employment practices alleged herein, occurred in New York County.

THE PARTIES

4. Mr. Gil is an individual over the age of eighteen residing in New Jersey. At all times mentioned herein Mr. Gil's place of employment was in New York.

5. Defendant Harvey Weinstein is an individual over the age of eighteen residing in New York during the relevant time period. At all times mentioned herein, Defendant acted individually.

6. Defendant Bob Weinstein is an individual over the age of eighteen residing in New York during the relevant time period.

7. Defendant David Glasser is an individual over the age of eighteen residing in New York during the relevant time period.

8. Defendant Weinstein Live Entertainment LLC ("WLE") is a domestic corporation duly incorporated under the laws of Delaware, with an office located and business conducted in New York.

FACTUAL ALLEGATIONS

9. In April 2011, The Weinstein Company ("TWC") hired Mr. Gil for an initial term of five years.

10. On November 17, 2016, TWC extended Mr. Gil's employment until December 9, 2018.

11. Mr. Gil received multiple promotions throughout his tenure, eventually obtaining the position of Chief Human Resources Officer.

12. Mr. Gil served as Chief Human Resources Officer until October 2017.

13. In the fall of 2017, Former Chief Executive Officer of TWC, H. Weinstein, directed Mr. Gil, outside the scope of his duties as Chief Human Resources Officer, to investigate the

allegations of sexual harassment against H. Weinstein published in an article by the New York Times in Fall 2017, as well as, who from TWC leaked the information damaging to H. Weinstein to the New York Times. During his employment Gil also became aware of illicit payments to Glasser by the CFO, payment both individuals hid from H. Weinstein. (All of the above herein after the “Improper Activities”).

14. Upon information and belief, Gil believed Glasser and the CFO may have been embezzling money from TWC, although money flowed back and forth between TWC and Glasser.

15. Pursuant to instructions from H. Weinstein, after his investigation, Mr. Gil relayed his findings to Defendant Weinstein’s attorney.

16. On October 6, 2017, Mr. Gil signed a Confidential Transaction Agreement providing that Mr. Gil would be paid a salary of \$450,000 as an employee of WLE (the “Agreement”). See **Exhibit A**.

17. That same day, Mr. Gil disclosed to H. Weinstein the details of his investigation into the sexual harassment allegations lodged against H. Weinstein.

18. Mr. Gil disclosed to H. Weinstein that upon information and belief, Defendants Glasser and B. Weinstein spoke with the New York Times and leaked the information.

19. On October 9, 2017, the Defendants retaliated against Mr. Gil for his protected activity and wrongfully suspended him without any justification.

20. Thereafter, Mr. Gil resigned from his employment with TWC.

21. Upon information and belief B. Weinstein and Glasser, as executives of TWC and individually, began to publish untrue statements to the media in an attempt to discredit Mr. Gil, and destroy his reputation in retaliation for Mr. Gil’s protected conduct.

22. Some statements allege that Mr. Gil removed personnel files and other information from TWC offices.

23. These statements were damaging to Mr. Gil's reputation and were made in retaliation for Mr. Gil's investigation into the Improper Activities at TWC.

24. H. Weinstein induced Mr. Gil to resign from his employment with TWC under the promise that he would be employed with Defendant WLE.

25. H. Weinstein and Mr. Gil agreed to a contract that would pay Mr. Gil, \$450,000 annually or if terminated \$450,000 immediately. H. Weinstein guaranteed the contract personally.

26. Mr. Gil's agreement provides, "In the event the Employee's (Gil) employment ceases for any reason. . .the Employee shall be entitled to timely receive from Weinstein a payment in the amount of his entire yearly salary of \$450,000.00 per annum." See **Exhibit A**.

27. To date, WLE failed to abide by its contractual obligation and provide Mr. Gil the monies rightfully owed to him pursuant to the agreement with WLE.

28. Further, the agreement provides that Defendant Weinstein remains personally liable for the funds owed to Mr. Gil in the event that WLE fails to perform or effect any of the terms set forth in the agreement. See **Exhibit A** at page 2, clause 3.

29. To date, H. Weinstein has failed to abide by his contractual obligation and provide Mr. Gil the monies rightfully owed to him pursuant to the agreement with WLE, and guaranteed by H. Weinstein.

30. Additionally, the Agreement provides an indemnification provision stating:

"Weinstein will indemnify, defend, and hold the Employee, his representatives, and his successors and assigns (the "Indemnified Parties") harmless, including by advancing any costs or fees, against any tax loss, cost, liability or expense including, without limitation, claims, threats, costs and expenses of litigation, hearings or investigations, and/or

attorneys; fees incurred or suffered the Indemnified Parties, concerning or arising out of: (a) Weinstein's failure to comply with or breach of any representation, warranty, or obligation under this Agreement and/or arising out of or in connection with the Agreement; and, (b) any claims related or connected in any way with Employee's employment with TWC or WLE, including without limitation regarding any injuries incurred, financial or otherwise, claims for breach of contract, or breach dereliction of any obligation to TWC and/or WLE." See **Exhibit A**, at page 3, clause 9.

31. Defendants retaliated against Mr. Gil for his investigation into the Improper Activities that occurred at TWC.

32. H. Weinstein and WLE refused to abide by the terms of their contract with Mr. Gil and pay him the guaranteed salary of \$450,000.

33. Defendants Glasser and B. Weinstein suspended Mr. Gil after he revealed the findings of his investigation.

34. Upon information and belief, Defendants Glasser and B. Weinstein began to destroy the reputation of Mr. Gil in retaliation for the investigation into and knowledge of the Improper Activities that occurred at TWC.

35. Upon information and belief Defendants Glasser and B. Weinstein made defamatory and disparaging statements to various news sources, including but not limited to Vanity Fair.

36. These actions were collectively taken against Mr. Gil in retaliation to his engagement in protected activity.

37. Mr. Gil remains unemployed since October 2017, unable to secure new employment as a result of the defamatory and slanderous remarks published in the media.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS H. WEINSTEIN AND WLE
(BREACH OF CONTRACT)

38. Mr. Gil repeats and realleges every paragraph above, as if fully set forth herein.

39. On October 6, 2017, Mr. Gil and Defendant H. Weinstein individually and on behalf of Defendant WLE had a meeting of the minds and entered into a Confidential Transaction Agreement. *See Exhibit A.*

40. The Agreement provided that Mr. Gil would move forward as an employee of WLE at a salaried rate of \$450,000.00 per annum.

41. Mr. Gil's agreement provides, "In the event the [Gil's] employment ceases for any reason. . .[Gil] shall be entitled to timely receive from Weinstein a payment in the amount of his entire yearly salary of \$450,000.00 per annum." *See Exhibit A.*

42. Further, Mr. Gil's agreement provides,

"To the extent WLE fails to perform or effect any of the terms as forth in this Agreement, Weinstein agrees to be personally responsible for and personally guarantee all terms in this Agreement, including without limitation with respect to any payments to be made or benefits to be conferred as set forth in Paragraphs 3(a) and 3(b), and additionally, in the event WLE refuses to commence the Employment or continue to employ Employee according to the terms of this Agreement for any reason, Weinstein shall make all payments and confer all benefits that Employee would otherwise have received if he were employed in the Employment for the entire duration of the term." *See Exhibit A.*

43. Additionally, the Agreement provides an indemnification provision stating,

"Weinstein will indemnify, defend, and hold the Employee, his representatives, and his successors and assigns (the "Indemnified Parties") harmless, including by advancing any costs or fees, against any tax loss, cost, liability or expense including, without limitation, claims, threats, costs and expenses of litigation, hearings or investigations, and/or attorneys; fees incurred or suffered the Indemnified Parties, concerning or arising out of: (a) Weinstein's failure to comply with or breach of any representation, warranty, or obligation under this Agreement and/or arising out of or in

connection with the Agreement; and, (b) any claims related or connected in any way with Employee's employment with TWC or WLE, including without limitation regarding any injuries incurred, financial or otherwise, claims for breach of contract, or breach dereliction of any obligation to TWC and/or WLE." See **Exhibit A**.

44. To date, Defendants WLE and H. Weinstein failed to abide by their contractual obligation and provide Mr. Gil the monies rightfully owed to him pursuant to the Agreement.

45. By their failure to act, Defendants WLE and H. Weinstein are in breach of the Agreement and remain responsible for the funds owed to Mr. Gil.

46. As a proximate result of Defendant WLE and Defendant H. Weinstein's conduct, Mr. Gil suffered and continues to suffer financial damages.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
(RETALIATION)

47. Mr. Gil repeats and realleges every paragraph above, as if fully set forth herein.

48. Mr. Gil was considered an employee of Defendants under New York State Human Rights Law.

49. Defendant H. Weinstein had an equity interest in TWC and WLE, as well as authority to hire and fire employees of both companies.

50. Defendant B. Weinstein had an equity interest in TWC as well as authority to hire and fire employees of both companies.

51. Defendant Glasser had authority to hire and fire employees of TWC.

52. Mr. Gil engaged in the protected activity when he investigated the Improper Activities that occurred at TWC.

53. Defendant H. Weinstein retaliated against Mr. Gil by refusing to honor the contract between WLE and guaranteed by H. Weinstein.

54. Mr. Gil disclosed that upon information and belief, Defendants B. Weinstein and Glasser spoke with the New York Times and accused Defendant H. Weinstein of sexual harassment.

55. Defendants possessed actual knowledge that Mr. Gil engaged in the protected activity when Mr. Gil reported the findings of his investigation pursuant to Defendant H. Weinstein's directives.

56. As a result of Mr. Gil engaging in this protected activity, Defendants B. Weinstein and Glasser wrongfully suspended Mr. Gil from his position.

57. Furthermore, upon information and belief, Glasser and B. Weinstein made multiple disparaging and defamatory statements to various media sources regarding Mr. Gil in retaliation to his engagement in protected activity as well as having knowledge of the Improper Activities.

58. These statements included but are not limited to, "Company officials and investigators further contend that Gil may have made off with portions of Weinstein's personnel file," and "The day, according to a statement the company provided to Vanity Fair, "Gil entered the offices of TWC employees without their knowledge and may have been responsible for the disappearance of personnel files.'" See copy of Vanity Fair article annexed hereto as **Exhibit B**.

59. As a result of these false published statements, Mr. Gil has been blacklisted from the entertainment industry and remains out of work since October 2017.

60. As a direct and proximate result of Defendants' unlawful conduct in violation of New York State Human Rights Law, Mr. Gil suffered and continues to suffer mental anguish and emotional harm including but not limited to humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, emotional pain and suffering, and economic damages for which

she is entitled to an award of monetary damages, liquidated damages, attorney's fees and costs, and all other appropriate relief.

WHEREFORE, Mr. Gil prays that the Court enter judgment in their favor and against Defendants, containing the following relief:

- A. A declaratory judgment that actions, conduct, and practices of Defendant complained of herein violate the laws of the State of New York;
- B. An award of damages in the amount to be determined at trial, plus prejudgment interest, to compensate Mr. Gil for all monetary and/or economic harm;
- C. An award of damages in the amount to be determined at trial, plus prejudgment interest, to compensate Mr. Gil for all non-monetary and/or compensatory harm, including but not limited to, compensation for mental anguish, humiliation, embarrassment, stress and anxiety, emotional pain and suffering, and emotional distress;
- D. An award of damages for any and all other monetary/non-monetary losses suffered by Mr. Gil in an amount to be determined at trial, plus prejudgment interest;
- E. An award of punitive damages;
- F. An award of costs that Mr. Gil incurred in this action, as well as Mr. Gil's reasonable attorneys' fees to the fullest extent permitted by law; and
- G. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 17, 2019

WHITE, HILFERTY & ALBANESE, P.C.

By: 

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